GRAIN SALE CONTRACT (March 2012 Edition)

Note: This is a draft contract and individual clauses need to be checked and adjusted to suit individual trading arrangements

Date:

This Contract is entered into between:

Name:	**Name:**
Company:	**Company:**
Address:	**Address:**
(Buyer)	(Grower/Supplier)

The Buyer agrees to purchase and the Grower/Supplier agrees to sell only the grain which is specifically described in this Contract and which is subject to the following Terms and Conditions.

Grain or seed type: ____

Moisture content: ____

Grade and specifications: ____

Inspection: ____

Quantity: ____

Tolerance: plus or minus ________% by weight

Packaging (bulk or bagged): ____

Weight: ____

Method of determining weight: ____

Purchase Price (GST exclusive): ____

Delivery Time/ Shipment Period: ____

Delivery Destination: ____

Payment Terms: The Buyer agrees to pay the Grower/Supplier the purchase price plus GST within 20 days of the date of delivery.

[ ] % on execution of this contract

[ ] % on delivery

[ ] % after delivery

Levies and Statutory Charges: All industry, Statutory and Government levies are payable and are inclusive of the purchase price. The parties acknowledge that it is the responsibility of the Grower/Supplier to make payment of all levies.

Disclosures: Is any part of the crop described in this contract subject to mortgage/encumbrance/lien?

NO ◊ YES ◊ (Please check the appropriate box) and if "Yes" please provide details

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This contract is subject to the Terms and Conditions attached to this contract.

Buyer: ______________________/___/___ **Grower/Supplier:**______________________ /____/___

(Signature) *(Date)* *(Signature)* *(Date)*

_______________________*(Name printed)* ____________________*(Name printed)*

Once executed this contract serves as confirmation and should be immediately returned to the Grower/Supplier.

The parties agree that a fax/email copy of this contract shall be sufficient to bind the parties.

TERMS AND CONDITIONS – GRAIN SALE CONTRACT (March 2012 Edition)

Definitions

In these Terms and Conditions:

"**Contract**" means the contract between the Buyer and the Grower/Supplier for the purchase of grain of which these terms and conditions form part.

"**Delivery Destination**" means the location recorded on page one of this contract.

"**GST**" means goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.

"**Inspection**" means sampling grain using a recognised and robust method and using recognised methods of inspection appropriate for the specifications.

"**Purchase Price**" means the price recorded on page one of this contract, which is GST exclusive and quoted in New Zealand dollars.

"**Qualified personnel**" means a person with the appropriate training and skills to undertake the defined tasks.

"**Quality**" means the attributes of grain that are measured using recognised testing methods and the agreed standards as are relevant to a prescribed end use.

"**Quantity**" means all quantities shall be expressed metrically and to the nearest one/one-hundredth [1/100] of a metric tonne unless the parties agree otherwise in writing.

"**The parties**" means the Buyer and the Grower/Supplier as recorded on the first page of this contract.

"**Time**" means that the times detailed in this contract are of the essence.

"**Weight**" means the agreed tonnage as recorded on page one of this contract.

1. **Acceptance of Terms and Conditions**: Execution of this contract constitutes acceptance by the Buyer of these Terms and Conditions.

2. **Tolerance**: The Grower/Supplier must deliver the tolerance figure of the weight at the purchase price as recorded on the first page of this contract.

3. **Weight**: Shall be determined by qualified personnel and shall be calculated at the delivery destination. If unable to be calculated at the delivery destination for any reason whatsoever it shall be calculated at the closest, certified public weighbridge to the delivery destination or agreed method of weighing as per this contract.

4. **Quality Grades**: Shall be determined by qualified personnel and shall be inspected at the delivery destination. If quality grade is unable to be inspected at the delivery destination for any reason whatsoever loading point quality grades shall apply.

5. **Warranty:**

   i) The Grower/Supplier warrants to the Buyer that the grain subject to this contract complies with all laws and requirements relating to chemical and pesticide residues and specified Government designated maximum residue levels; and

   ii) The Grower/Supplier is responsible for growing the grain to recommended best management practice guidelines.

6. **Delivery:** The Grower/Supplier shall have the first option to arrange delivery of the grain to the Buyer.

7. **Penalty Interest:** If payment of the purchase price has not made within 20 working days of the delivery date penalty interest shall be payable at the rate of 1.5% above the base lending rate from time to time of the Grower/Supplier's bank, which shall be calculated per calendar month and payable on a daily basis from the due date for payment until the date payment is made.

8. **Risk**: The Buyer shall assume all risk of loss to the grain once it has left the Grower/Supplier's possession/ principal place of storage. If the Grower/Supplier is responsible for the delivery of the grain then risk shall pass to the Buyer upon delivery.

9. **Ownership**:

   i) Title in the grain shall not pass from the Grower/Supplier to the Buyer until payment is received in full by the Grower/Supplier (whether under this contract or otherwise).

   ii) The parties agree that until payment is received the Buyer and/or its agents or 3rd party holds the grain as Bailees.

   iii) If the Buyer defaults under any of the Terms and Conditions of this contract the Buyer; and on behalf of its agents or 3rd party authorises the Grower/Supplier to enter any premises and retake possession of the grain without notice to the Buyer, its agents or 3rd party.

   iv) If the Grower/Supplier's grain becomes intermingled or incorporated with any other goods in such a way that the grain ceases to exist separately, the original ownership of the new good(s) created by that mixing will vest immediately on creation in the Grower/Supplier as co-owner of the new goods. The co-ownership of the new goods will be calculated proportionally to the value of the various component goods. The Grower/Supplier's ownership of the new goods is otherwise on the same terms as the ownership of the grain originally supplied.

   v) Until such time as the Grower/Supplier has received payment in full, any on-sale by the Buyer is made as the Grower/Supplier's agent and the Buyer holds the proceeds of any on-sale of the grain as trustee for and on behalf of the Grower/Supplier and must account for those proceeds on demand. Where at the time the Buyer is in default under these Terms and Conditions and the Buyer has not received proceeds of any on-sale the Grower/Supplier is expressly authorised to receive proceeds of on-sale direct from the 3rd party.

vi) The Buyer grants a security interest to the Grower/Supplier in the grain (or new goods if intermingled). The Grower/Supplier may at their discretion register a Financing Statement.

10. **Rejection**: They Buyer shall not be entitled to reject the grain subject to this contract unless the grain is less than the grade agreed between the parties on the first page of this contract.

11. **Finality:** All adjustments claimed based on defect of quality or condition or weight which shall be apparent upon reasonable inspection must be advised by the Buyer to the Grower/Supplier within five days after unloading or presentation of the appropriate documents and must be formally confirmed by written notice, letter or facsimile within thirty consecutive days of delivery.

12. **Failure to Perform**: If either party is in default under these Terms and Conditions it shall be only that delivery/shipment of grain which amounts to a default. Any other contract entered into between the parties (whether it be an ongoing contract for future supply or a separate contract) shall remain valid.

13. **Termination:** This contract (including any unperformed obligations of the Grower/Supplier) may be terminated by either party's written notice to the other that the contract is at an end due to:
    i) The defaulting party's default under the contract; or
    ii) The defaulting party becoming insolvent; or being subject to the appointment of a receiver, manager, liquidator, or the statutory manager; or committing an act of bankruptcy; or making a scheme of arrangement with its creditors; or being unlikely to be able to its obligations to the other party (in the opinion of the Grower/Supplier).
    iii) In the event that the Buyer fails to make payment of the purchase price in accordance with these Terms and Conditions the Buyer must immediately forward all money due and owing to the Grower/Supplier.
    iv) Upon termination where the Buyer is the defaulting party the Grower/Supplier may at its option (by notice in writing within 7 days of termination) repurchase from the Buyer all or part of the grain subject to this contract at the purchase price provided the Grower/Supplier shall be responsible for the arranging and for the cost of transport and insurance.
    v) Where the Grower/Supplier exercises its right to repurchase the grain, such right shall not extend to grain where the Buyer has accepted order from 3rd parties prior to the date of termination and where delivery is to take place within 20 days of the date of termination.

14. **Notice:** Any notice given pursuant to these Terms and Conditions shall be in writing addressed to the party to whom it is given, or sent by facsimile, email or by any other method of rapid written communication.
    i) Any notice received after 1700 hours shall be deemed to have been received on the following day; and

ii) A notice to a party's Brokers or Agent shall be deemed a notice under these Terms and Conditions. In case of re-sales, any notice shall be passed on without delay by the Buyer to their respective 3rd party or vice versa.

15. **Force Majeure:** The Grower/Supplier shall not be responsible for damages or for delay in delivery of grain to the Buyer when such delay is due to conditions beyond the Grower/Supplier's reasonable control including, but not limited to - an act of God, fire, flood, wind, earthquake, explosion, power failure, war, embargo, act of Government, strike (including dock and/or shipping strike), lock-out, combination of workers, or civil commotion which is not due to the Grower/Supplier's own acts or negligence.
    i) Loss of grain due to production risks or crop failure does not constitute a condition of Force Majeure.
    ii) The party invoking this clause must provide written notice to the other party to this contract within 5 days from the date of the event; and
    iii) If a Force Majeure exists for more than 120 days, either party may terminate the contract with immediate effect on written notice to the other party.

16. **Dispute Resolution:** In the event of any dispute or difference arising between the Grower/Supplier and the Buyer as to any matter arising out of this contract the parties will make a reasonable effort to resolve the dispute by negotiation; and
    i) If these efforts are unsuccessful shall within 7 days refer the dispute or difference to a Mediator to be appointed jointly by the parties. The parties agree to share the costs of such appointment.
    ii) All Mediation discussions shall be without prejudice and shall not be referred to in any subsequent proceedings of any kind.
    iii) In the event that Mediation is unsuccessful then the parties agree to refer the dispute to Arbitration within 30 days. Arbitration is to be conducted in accordance with the provisions of the Arbitration Act 1996.
    iv) The Arbitrator's decision shall be final and binding and the parties waive any right to appeal against the award or seek judicial review of it in any Court.
    v) The parties agree to share the costs of the Arbitrators appointment unless the decision awards costs.

GUIDELINES ON PRICING/ PAYMENT TERMS

Where a contract is agreed, the term of which is for a longer period (not just a single delivery) which may also involve multiple shipments or a timeline for future delivery, it may be agreed to negotiate the purchase price and delivery times throughout the life of the contract. This would normally require agreement between the Grower/Supplier and Buyer on the quantity and quality to be purchased over the longer period with an agreed process for establishing future purchase price and the timing for delivery instalments.

The objective of this pricing guideline is to provide examples if contracts which would enable longer term relationships which will develop to ensure that the terms meet the needs of both parties including:

1. Ensuring that the shipments and storage of grain meet the requirements of the Buyer/end user and are within the storage capabilities and requirements of the Grower/Supplier;
2. That the timing of purchase price payments reflects both the financial requirements of both parties;
3. That any pricing arrangements for future periods reflect the changing market conditions at the time;
4. Whether there is a need for delivery of a fixed quantity of grain on a weekly basis to meet the Buyer/end user's requirements or whether it is necessary in the opinion of the Grower/Supplier for the Buyer to take an agreed quantity of grain at key dates to ensure that silos are empty by year end;
5. That the timing of payments should reflect the volumes of grain shipped, but may also require a certain proportion of the total payments to be made by key dates. This would be particularly important where either party had flexibility over the timing of delivery.

Longer term contracts have increasingly included more complex agreements for price fixing which remove the pricing risk from contracts and work to improve longer term relationships between parties. A wide range of options are available to depending on the needs of both parties. These may include:

- Renegotiating prices at key dates of the year.
- Using a price that is related to a reference market price - the reference market price could be a published local, price or the published import price. This type of agreement can be used to reduce the frustration often caused by changing market options within a season.
- Use a formula to calculate a payment that is related to other known prices such as the milk price, or meat schedule. These arrangements may be useful to encourage increased user loyalty and longer term use of grain. They would often require a limit on the price movement to deal with risks from significant shifts in grain prices.